

**CITY OF SAN JOSE
REQUEST FOR QUALIFICATIONS (RFQ)
INVESTIGATOR – SAN JOSE ELECTIONS COMMISSION**

The City of San Jose is seeking to contract with an investigator/evaluator (investigator) experienced in conducting investigations such as law enforcement, ethics or employment related investigations to serve as an independent investigator for the City of San Jose Elections Commission (Elections Commission or Commission).

GOAL AND OBJECTIVE

The City's goal and objective is to obtain complete, thorough, and expeditious investigations and evaluations of complaints which are filed with the City's Elections Commission. The evaluations and investigations must include in depth and sound analysis of the facts, evidence and issues relating to complaints alleging violations of the "Ethics Ordinances" contained in Title 12 of the San Jose Municipal Code including the City of San Jose Campaign Contribution Ordinance (Chapter 12.06 of the San Jose Municipal Code).

The Investigator must have experience in investigative practices and procedures including skills in obtaining information and facts through interview, questioning and observation. The Investigator will review and investigate complaints and prepare a written Report and Recommendations directly to the San Jose Elections Commission. The evaluation and investigation process including the report and recommendations of the Investigator will be required to be done on an expedited basis.

The Investigator may be requested to assist with investigations of complaints which are conducted by the Commission's Attorney Evaluator. Additionally, the Investigator will monitor compliance with the requirements of Title 12 of the Municipal Code or conduct audits at the request of the Commission.

The Investigator must be neutral and impartial and must not have or appear to have any reason for any bias or favoritism towards any Councilmember or candidate in any way.

The Elections Commission will select the Investigator who will be hired by Agreement. The Commission shall present the Agreement with the selected candidate to the City Council for approval on a public agenda. The Agreement will be subject to termination at the pleasure of the Elections Commission. The Agreement will have to be terminated if any circumstances arise which, in the judgment of the Commission, would compromise the appearance of neutrality.

Investigations by the Investigator and the Elections Commission and Commission hearings are governed by Regulations and Procedures adopted by Resolution No. 72547 of the City Council of the City of San Jose, a copy of which is attached to this RFQ as Attachment C.

GENERAL BACKGROUND INFORMATION

The San Jose Elections Commission is established by ordinance of the City Council. The Elections Commission has five members who are appointed by no less than two-thirds vote of the City Council. Members of the Commission serve up to two four-year terms for a maximum of eight years.

The Elections Commission monitors compliance with all City of San Jose campaign and ethics ordinances contained in Title 12 of the San Jose Municipal Code and investigates complaints alleging violations of the City's Campaign Contribution Ordinance contained in Chapter 12.06 of the San Jose Municipal Code. Additionally, the Commission can make recommendations to the City Council with regard to campaign and ethics regulations and policies.

Ordinances contained in Title 12 of the San Jose Municipal Code are as follows:

Chapter 12.02	General Provisions
Chapter 12.04	San Jose Elections Commission
Chapter 12.06	Municipal Campaign and Officeholder Contributions
Chapter 12.08	Prohibition of Gifts
Chapter 12.10	Revolving Door Restrictions
Chapter 12.12	San Jose Municipal Lobbying
Chapter 12.14	Concurrent Employment of City Council Members or City or Agency Employees
Chapter 12.15	Prospective Employment
Chapter 12.16.	Disclosure of Fundraising Solicitations

The City Attorney's Office provides legal advice to the Commission related to non-complaint matters or general interpretations of the Municipal Code or relevant state or federal law, but does not participate in investigations or reviews of complaints which are filed with the Commission. The Chair of the Commission or the Investigator may consult with the City Attorney at any time with regard to procedure or an interpretation of the Municipal Code, in general, and not as it applies to facts that are the subject of a pending complaint.

INFORMATION REQUESTED

A. Statement of Qualification Requirements

The Statement of Qualifications submitted in response to this RFQ must be no more than **10 pages** (excluding attachments and appendices) using a typeface font of no less than **12 pitch**. The Statement must address each of the questions and requests for information below. The attachment of a firm or individual's resume in lieu of responding to one or more of the information requests set forth below will be deemed **non-responsive**.

Each Statement of Qualifications will be reviewed to determine if all required documentation and information was included with the submittal and if the respondent proposer has met the qualifications.

If a proposer fails to provide the required documentation and information, the Statement of Qualifications will be deemed non-responsive.

Proposers are requested to provide:

- A complete statement detailing the Proposer's educational, employment and professional background.
- Information regarding the Proposer's familiarity and experience with City, state and federal campaign, elections, conflicts of interest and ethics laws.
- Information regarding the Proposer's experience in conducting investigations and experience and skills in gathering and evaluating facts. If available, Proposers should submit samples of written reports of investigations which demonstrate the experience and skills required for the position of Investigator.
- Proposer should submit an overall written approach for delivering the services to the Elections Commission as requested by the Commission in this RFQ. Information on the ability of the Proposer to meet the timelines and deadlines in the Commission's Regulations and Procedures should also be submitted.
- Proposers must identify any potential conflicts of interest that the individual and/or firm might have in providing services to the Commission and the City.
- Proposers must disclose any current or past working or contractual relationships with City of San Jose elected officials.
- Proposers should be prepared to discuss the ability of the Proposer to meet expedited investigation requirements if an interview is scheduled with the Elections Commission.

B. Reference Statement

Proposers are required to provide a list of at least two (2) professional references including any firms, organizations or entities which have used or are familiar with Proposer's services in the past five years.

C. Description of Fees/Rates

- Proposers are required to provide a schedule of fees or rates on an hourly basis to provide the services requested in this RFQ. Additionally, Proposers should also include information as to whether or not a retainer is required during the term of the Agreement and should specify the dollar amount of any such retainer.

CONDITIONS OF RESPONDING TO RFQ

A. Verification of Statements

The submission of statements and information within a proposal shall be considered to constitute the Proposer's approval and consent for the Commission or the City to check, verify and certify all such information and statements. Additional information may be required by the Commission

B. Terms and Conditions

1. The Elections Commission will not pay any costs incurred in the submission of a response. Each Proposer should be aware that the California Public Records Act (Gov. Code §§ 6250 et seq.) considers most documents provided to the Commission to be public records subject to public disclosure. The Commission is obligated to comply with the Act and cannot assure candidates that information provided to the Commission is confidential.

2. The Commission reserves the right to reject any items or groups of items submitted in response to this RFQ.

3. The Commission reserves the right to waive any minor informality or irregularity in any response.

4. The Commission reserves the right to negotiate any and all terms of an agreement with one or more Proposers, including scope of services and compensation, whether or not these terms are consistent with those prescribed in the RFQ.

5. The Commission, may, for any reason, decide not to award an Agreement as the result of this RFQ or decide to accept that Proposal which will, in the Elections Commission's opinion, be most advantageous to the Commission.

6. It is the City's policy that the selected individual or firm shall not discriminate, in any way, against any, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of City of San Jose contracts and agreements.

SELECTION PROCESS AND EVALUATION CRITERIA

A. Selection Process

Set forth below are the criteria that the Elections Commission will use to evaluate responses to this RFQ. The Commission or a subcommittee of the Commission will evaluate the Statements of Qualifications of the proposers. The City reserves the right to interview prospective individuals or firms prior to making its selection. The City also reserves the right to rely on information from sources other than the information provided by the proposers.

The Commission's preference is to select one individual or firm to serve as its Investigator. The City, however, may determine to engage a different individual or firm to provide these services from the pool of individuals or firms established through this RFQ process. In order to be included in the pool, an individual or firm must receive a minimum score of **70 points**.

Effective June 18, 2004, the City adopted Ordinance 27136, which established a Local and Small Business Preference Policy for the procurement of supplies, materials, equipment, general services and consulting services. In order for you or your firm to be eligible for local and/or small business preference, you must complete Attachment A1, Request for Contracting Preference for Local and Small Business. If you fail to complete this form, you or your firm will be denied consideration for local/small business preference. The requested information cannot be submitted after the deadline.

B. Evaluation Criteria

The City will evaluate responses to this RFQ based on the following factors:

1. Experience (65 points).

- a. Quality and depth of experience(s) and expertise regarding familiarity and experience with City, state and federal campaign, election, conflicts of interest and ethics laws.

- b. Information regarding the Proposer's experience in conducting investigations and experience and skills in gathering and evaluating facts. If available, Proposers should submit samples of written reports which demonstrate the experience and skills required for the position of Investigator.
- c. Proposer should submit an overall written approach for delivering the services to the Ethics Board as requested by the Board in this RFQ. Information on the ability of the Proposer to meet the timelines and deadlines in the Board's Regulations and Procedures should also be submitted.
- d. Proposers should be prepared to discuss the ability of the Proposer to meet expedited investigation requirements if an interview is scheduled with the Ethics Board.

2. Fee Structure (20 points).

3. Local or Small Business Enterprise (10 points).

- a. Qualified Local Business Enterprise. (5 points)
- b. Qualified Small Business Enterprise. (5 points)

4. Responsiveness of Statement of Qualifications (5 points).

Overall organization and quality of Statement of Qualifications, including cohesiveness, conciseness, clarity of response and attention to detail.

PROPOSAL SUBMITTAL INFORMATION AND DEADLINE

Responses to the RFQ and Statements of Qualifications from Proposers shall be submitted to:

San Jose Elections Commission
c/o Lee Price, City Clerk
City of San Jose
200 E. Santa Clara Street – 2nd Floor/Wing
San Jose, CA 95113
Attn: RFQ Review

One (1) signed original and 5 copies of the responses to the RFQ shall be submitted in sealed envelopes to the above address and responses must be received no later than 5:00 p.m., October 14, 2005.

Responses received after the indicated time will not be considered for award of the proposed contract.

ATTACHMENT A

City of San Jose Request for Contracting Preference for Local and Small Businesses			
<p>Chapter 4.06 of the San Jose Municipal Code provides for a preference for Local and Small Businesses in the procurement of contracts for supplies, materials and equipment and for general and professional consulting services. The amount of the preference depends on whether the vendor qualifies as a Local Business Enterprise* or Small Business Enterprise** and whether price has been chosen as the determinative factor in the selection of the vendor.</p> <p>In order to be a Local Business Enterprise (LBE) you must have a current San Jose Business Tax Certificate Number and have an office in Santa Clara County with at least one employee. If you qualify as an LBE you can also qualify as a Small Business Enterprise (SBE) if the total number of employees (<i>regardless of where they are located</i>) of your firm is 35 or fewer.</p> <p>There are two ways in which the preference can be applied. In procurements where price is the determinative factor (<i>i.e. there are not a variety of other factors being considered in the selection process</i>) the preference is in the form of a credit applied to the dollar value of the bid or quote. For example, a non-local vendor submits a quote of \$200 per item and a LBE submits a quote of \$204 per item. The LBE receives a 2.5% credit on the quote, which equals approximately \$5 and thus the LBE will win the award because the quote is evaluated as if it had been submitted as \$199.</p> <p>In procurements such as RFP there are usually a variety of factors evaluated to determine which proposal best meets the City's needs. In procurements such as these where price is not the determinative factor, an LBE or SBE will be given an additional 5% to 10% points in the scoring of their proposal.</p>			
The following determinations have been made with respect to this procurement: (for official use only)			
Type of Procurement	<input type="checkbox"/> Bid	<input type="checkbox"/> Request for Quote	<input checked="" type="checkbox"/> Request for Proposal
Type of Preference	<input type="checkbox"/> Price is Determinative		<input checked="" type="checkbox"/> Price is Not Determinative
Amount of Preference	LBE preference = 2.5% of Cost SBE preference = 2.5% of Cost		LBE preference = 5% of Points SBE preference = 5% of Points
In order to be considered for any preference you must fill out the following statement(s) under penalty of perjury.			
Business Name			
Business Address			

Telephone No.			
Type of Business	<input type="checkbox"/> Corporation	<input type="checkbox"/> LLC	<input type="checkbox"/> LLP
	<input type="checkbox"/> General Partnership	<input type="checkbox"/> Sole proprietorship	<input type="checkbox"/> Other (explain)
*LOCAL BUSINESS ENTERPRISE (LBE) PREFERENCE In order to qualify as an LBE you must provide the following information: Current San Jose Business Tax Certificate Number			
Address of Principal Business Office or Regional, Branch or Satellite Office with at least one employee located in Santa Clara County:			
**SMALL BUSINESS ENTERPRISE (SBE) PREFERENCE In order to qualify as an SBE you must qualify as an LBE and have 35 or fewer employees. This number is for your entire business --NOT just local employees, or employees working in the office address given above. Please state the number of employees that your Business has:			
Based upon the forgoing information I am requesting that the Business named above be given the following preferences (<i>please check</i>): <input type="checkbox"/> Local Business Enterprise <input type="checkbox"/> Small Business Enterprise I declare under penalty of perjury that the information supplied by me in this form is true and correct. Executed _____, California at: _____ Date: _____ Signature _____ Print name _____			

ATTACHMENT B

INSURANCE

INVESTIGATOR, at INVESTIGATOR's sole cost and expense for the full term of this contract or any renewal thereof, shall obtain and maintain at least all of the following minimum insurance requirements prior to commencing any work or receiving payments therefore under this contract:

A. Automobile Policy.

INVESTIGATOR agrees to keep in good standing a valid California driver's license at all times during the term of this AGREEMENT. INVESTIGATOR shall also obtain, and keep in force during the term hereof, a policy of motor vehicle public liability insurance which shall afford not less than the following amounts of coverage: bodily injury liability \$100,000 each person, \$300,000 each occurrence; property damage liability, \$50,000 each occurrence.

B. Workers' Compensation and Employers' Liability Policy.

1. This policy shall be written in accordance with the laws of the State of California and providing coverage for any and all employees of INVESTIGATOR:
2. This policy shall provide coverage for Workers' Compensation (Coverage A).
3. This policy shall also provide coverage for \$1,000,000 Employers' Liability (Coverage B).

C. Endorsements.

The following endorsement is required to be made a part of the above required policy:

1. "Thirty (30) days prior written notice of cancellation shall be given to the City of San Jose in the event of cancellation and/or reduction in coverage of any nature."

D. Proof of Coverage.

A copy of the required Endorsement shall be attached to the Certificate of Insurance which shall be provided by the INVESTIGATOR's insurance company as evidence of the stipulated coverages. This Proof of Insurance shall then be mailed to:

CITY OF SAN JOSE
Department of Finance
Debt & Risk Management Division
801 N. First Street, Rm. 110
San Jose, CA 95110

E. Exception.

If, however, the INVESTIGATOR does not have any employees and does not wish to cover himself/herself for Workers' Compensation, the INVESTIGATOR shall sign the following statement as well as the contract itself to effect a fully initiated contract:

I, as the herein designated INVESTIGATOR, do not have, nor intend to have for the full term of this AGREEMENT, any employees. Furthermore, I do not wish to obtain or be covered under any Workers' Compensation insurance coverage and, therefore, am signing this statement in lieu of providing the above required Workers' Compensation Coverage.

Signature of INVESTIGATOR

Date

(Please print or type name of company/investigator)

**ATTACHMENT C
RESOLUTION NO. 72547**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN
JOSE AMENDING REGULATIONS AND PROCEDURES
FOR THE SAN JOSE ELECTIONS COMMISSION
INVESTIGATIONS AND HEARINGS**

WHEREAS, the San Jose Elections Commission (Commission), is charged under Chapter 12.04 of the San Jose Municipal Code to investigate complaints alleging violations of Title 12 of the San Jose Municipal Code and take enforcement action where appropriate; and

WHEREAS, formal regulations are required to ensure that all interested parties are apprised of and understand the procedures by which a fair hearing will be conducted.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE
CITY OF SAN JOSE:**

SECTION 1 The following Regulations and Procedures as amended are hereby adopted and shall govern all proceedings before the San Jose Elections Commission (Elections Commission or Commission).

**REGULATIONS AND PROCEDURES
FOR
SAN JOSE ELECTIONS COMMISSION
INVESTIGATIONS AND HEARINGS**

A. PREAMBLE

These Regulations and Procedures of the San Jose Elections Commission are promulgated in order to ensure the fair, just, and timely resolution of complaints presented to the Commission that allege violations of City ordinances relating to campaign finance, lobbying, conflicts of interest and governmental ethics, by:

1. Setting and maintaining objective standards for the investigation and determination of matters brought before the Commission;
2. Eliminating any improper influence in the investigation and determinations of persons alleged to have committed ethics violations

3. Assuring reasonable time frames within which enforcement proceedings should be completed;

B. DEFINITION OF TERMS

For purposes of these Regulations and Procedures, the following definitions shall apply:

1. "Elections Commission" or "Commission" means the San Jose Elections Commission
2. "Complainant" means a person or entity that files a complaint.
3. "Complaint" means the Elections Commission Complaint Form, completed by the complainant, which is on file with the City Clerk.
4. "Candidate" means a person who is running for City Office or is City elected officeholder.
5. "Day" means calendar day, unless otherwise specifically indicated.
6. "Election Cycle" is that period of time from the date when a candidate files a Statement of Intention to be a Candidate to an office in accordance with Government Code § 85200 and until a candidate has been elected to that office.
7. "Ethics Ordinances" shall mean all ordinances found in Title 12 of the San Jose Municipal Code.
8. "Evaluator" means a person who is neutral, impartial, who meets the qualifications in Section C and D and who has been retained as provided herein.
9. "Exculpatory information" means information tending to show that the Respondent is not guilty of the alleged violations.
10. "Mitigating information or circumstances" means information or circumstances tending to excuse or reduce the significance of the Respondent's conduct.
11. "Preliminary Investigation" is that investigation conducted by the Evaluator or attorney member of the Commission prior to any presentation to the Commission.
12. "Respondent" means a person or entity that is alleged in a complaint to have violated an Ethics Ordinance.

C. HIRING OF THE EVALUATOR

1. The San Jose Elections Commission shall submit to the City Council a budget request in advance of each election cycle which will enable the City Council to appropriate funds anticipated to be needed for the Evaluator for a period of two years.
2. The Commission shall prepare and issue a Request for Qualifications/Quotes for an Evaluator in advance of the election cycle.
3. The Evaluator must have a legal background and experience with ethics, election or political law.
4. The Evaluator must be neutral and impartial and must not appear to have any reason for any bias or favoritism towards any Councilmember or candidate in any way.
5. The Commission shall select the Evaluator and present the contract with the selected candidate to the Council for approval of the contract on a public agenda.
6. The Contract shall have a two year term.
7. The Contract with the Evaluator shall be subject to termination at the pleasure of the Commission.
8. The Contract shall be terminated if any circumstances arise which in the judgment of the Commission would compromise the appearance of neutrality.

D. HIRING OF AN EVALUATOR/INVESTIGATOR

1. In addition to the Evaluator, the Elections Commission is authorized to hire an independent Evaluator/Investigator (“Investigator”) by contract executed by the City Clerk.
2. The Commission shall prepare and issue a Request for Qualifications/Quotes for the Investigator to conduct investigations or assist with investigations of complaints which are assigned by the Elections Commission and to monitor compliance with the requirements of Title 12 of the San Jose Municipal Code as requested by the Elections Commission.
3. The Investigator must have experience in conducting investigations such as law enforcement, ethics or employment related investigations. Further, familiarity with conflict of interest, campaign finance, and lobbying laws is desirable.
4. The Investigator must be neutral and impartial and must not appear to have any reason for any bias or favoritism towards any elected official of the City and must be willing to forego all personal involvement in political campaigns in the County of Santa Clara.
5. The contract with the Investigator shall be subject to termination at the pleasure of the Commission.
6. The contract shall be terminated if any circumstances arise which in the judgment of the Commission would compromise the appearance of neutrality.
7. The contract with the Investigator shall be administered by the City Clerk.
8. For purposes of the investigation of complaints by the Investigator, the provisions of these Regulations and Procedures which are applicable to the Evaluator shall also apply to the Investigator.

E. COMPLAINTS OF ALLEGED VIOLATIONS

1. Any person may file a complaint alleging possible violations of the City Campaign and ordinances set forth in Title 12 of the San Jose Municipal Code.
2. Complaints shall only be filed with the City Clerk who shall act as the Secretary to the Commission.

3. Complaints must be filed on a complaint form, approved by the Commission, and available in the Office of the City Clerk. The City Clerk may accept complaints by letter or electronic mail which provide the specificity and detail as required in this Section.
4. All complaints which are filed shall be forwarded promptly to the Evaluator by the City Clerk.
5. A complaint shall provide as much specificity and detail as possible, including facts constituting the alleged violations, the name and address of the person who is alleged to have violated an ordinance and the names and addresses of potential witnesses.
6. The complaint may be filed anonymously, but in this situation, the complainant must state good cause for anonymity. The Evaluator and the Commission may consider the anonymous nature of the complaint, and the reasons given for anonymity in their considerations of such complaint.
7. Complaint forms shall be filed with the City Clerk in person during business hours, by mail or by facsimile.
8. If a member of the Commission is a complaining party, that member's right to participate is the same as any other complaining party.
9. A member of the Commission who files a complaint may participate and vote on a matter concerning such complaint except in the following circumstances:
 - a. Where the member of the Commission filing the complaint is a witness who was interviewed by the Commission's Evaluator during the investigation of the complaint because of the member's personal knowledge of the alleged violation; or
 - b. Where a member of the Commission files a complaint based on the member's personal knowledge of facts and circumstances beyond the member's information and belief that there may be a violation of the San Jose Municipal Code.

F. REVIEW OF COMPLAINTS BY EVALUATOR

1. The Evaluator shall notify the Respondent of the allegations and provide the Respondent with a complete copy of the complaint immediately upon the receipt of the complaint, unless the Evaluator determines that it is necessary to delay the notification in order not to compromise the investigation.

2. The Evaluator shall review every complaint to determine whether sufficient cause exists to conduct a preliminary investigation.

Sufficient cause shall exist when a complaint identifies specific facts, which if proven, would be a violation of the Municipal Code. No investigation shall be conducted if the complaint does not contain sufficient facts to demonstrate a potential violation, if the facts would not amount to a violation of law or if identical allegations which have already been addressed in a prior investigation

3. Complaints which allege violations which have occurred more than four years prior to the date of filing will not be considered by the Commission.
4. Except as provided in this Subsection 4, the Evaluator shall refer any complaint where the Respondent is a classified or unclassified employee appointed by a City Council Appointee to the appointing authority for investigation and action. The Commission shall take no further action on the complaint with regard to the Employee. Any City Employee who is a candidate for City office shall be treated as any other candidate for purposes of Chapter 12.06 of the San Jose Municipal Code.
5. If the Complaint, on its face, does not warrant a preliminary investigation, the Evaluator shall advise the Chair. The Chair will schedule the Evaluator's report and recommendation on a Commission Agenda for approval.
6. If the Commission, upon reviewing the Evaluator's determination of lack of sufficient cause, determines that the complaint identifies specific facts which if proven would be a violation of the Municipal Code, the Commission shall direct the Evaluator to commence an investigation.
7. If sufficient cause is found by the Evaluator, or on review by the Commission, the Evaluator shall conduct an investigation. Such investigation may include, but shall not be limited to, the interview of the Respondent(s) and any witnesses, as well as the review of documents and other evidence.
8. When the Evaluator concludes an investigation, the Evaluator shall prepare a written Report and Recommendation. The Report shall contain a summary of law and evidence gathered through the investigation, including any exculpatory and mitigating information. The Evaluator may consider all relevant facts and evidence including, but not limited to hearsay evidence, and shall include in the Report all facts bearing on the weight accorded the evidence. The Report shall state whether the Evaluator concludes that a Respondent did or did not violate City law.

Recommendations may include actions to be taken by the Commission or there would be further investigation conducted by the Evaluator.

9. No complaint, investigative file or information contained therein, shall be disclosed to any person other than a Respondent or Respondent's representative, the City Attorney, District Attorney, a court, a law enforcement agency, or otherwise as necessary to the conduct of an investigation, prior to the presentation of the Report and Recommendations to the Commission. The Evaluator, however, may communicate with the Chair of the Commission on procedural matters relating to a pending complaint during the course of the investigation.

After the Report is presented, complaints, related documents, and investigative files shall not be disclosed except as required by the California Public Records Act (Government Code §§ 6250 et seq.).

10. If an Evaluator is unable to review or investigate a complaint, the attorney member of the Commission may review or investigate complaints in accordance with the provisions of this Section. In such case, the attorney member may not participate in the Commission's investigations and hearings as set out in these Regulations and Procedures.

G. COMMISSION HEARING

1. The Evaluator will advise the Chair of the Commission to set a Hearing at the earliest practicable date.
2. The City Clerk shall notify persons who filed the complaint and the Respondent of the date and time of the meeting at which the complaint will be reviewed by the Commission.
3. The Evaluator's Report and Recommendations shall be delivered to the Commission, the Respondent and all interested parties who request the Report, 72 hours in advance of the Commission Hearing, if possible.
4. The Commission shall consider the Report and Recommendation of the Evaluator as well as any other evidence presented at the Hearing.
5. The Respondent may, but need not, submit a written response to the Report and Recommendations. The response may contain legal arguments, a summary of evidence and any mitigating or exculpatory information.

6. The Respondent who chooses to submit a response must deliver the response 24 hours in advance of the Commission Hearing, if possible. The Respondent must deliver a total of eight copies of the response to the City Clerk for distribution to the Commission and the Evaluator.
7. The Respondent may appear before the Commission personally or be represented by counsel or any other person.
8. The formal Rules of Evidence shall not apply to the Hearing.
9. All testimony presented to the Commission shall be under oath or affirmation.
10. All questions of witnesses or the Evaluator shall be presented by the Commission members through the Chair.
11. The Commission, if necessary, may compel the testimony of witnesses and may compel the production of relevant documents to the Evaluator by subpoena, but this power may be used only as a last resort, after good faith efforts to acquire the relevant information have failed and upon a finding that the information or testimony is essential for a determination in the matter.
12. The Chair of the Commission, after consultation with the Evaluator, may subpoena witnesses and compel their attendance and testimony and require by subpoena the production of any books, papers, records or other items at a scheduled Commission hearing or meeting. Use of the subpoena power by the Chair shall be used only after a written determination that the information or testimony is essential for a determination and material to the duties and/or exercise of the powers of the Commission and that good faith efforts to acquire relevant information have failed.
13. Except as otherwise provided above, individual members of the Commission may not investigate complaints nor discuss pending complaints with anyone except during the course of public hearing.
14. The Complainant is to be treated like any other witness in providing evidence. Any interested person can submit a brief to the Commission or any written argument 24 hours before the Commission convenes to consider the complaint, if possible. The brief or written argument must be simultaneously provided to the Respondent.
15. The Hearing shall be recorded by the City Clerk.
16. The Hearing shall be open to the public. Witnesses may be excluded at the discretion of the Commission.

17. Prior to a final determination on the merits of a complaint, there shall be no oral or written communications regarding the merits of a complaint with any person or entity unless the communication is necessary for the conduct of the investigation or except as otherwise provided above. After a final determination, the Commission shall issue a written report or statement and any member of the Commission can issue a dissenting Report either individually or jointly. After the final determination, the Chair shall be the sole contact with the public and media.

H. SCHEDULING AND NOTICE OF HEARING ON MERITS

1. This process is to be completed at the earliest possible time. While timelines cannot be precise because of the nature of an investigation, timeliness is paramount.
 - a. If the Evaluator does not find sufficient cause then the Evaluator's Report to the Commission shall be issued in no more than 7 days from receipt of the complaint.
 - b. The investigation must be completed in time for a Commission Hearing in no more than 2 weeks from receipt of the complaint.

2. Time Extensions

Whenever an action is required to be completed by a particular time pursuant to these Regulations or an order of the Commission, the Evaluator or Respondent may request an extension of time. Requests for extensions of time may be made to the Chair. The Chair may grant the request only upon a showing of good cause.

I. ROLE OF THE CHAIR

1. Procedural Hearing Matters
 - a. The Chair shall make procedural determinations including but not limited to the scheduling of hearings, time extensions and order of witnesses.
 - b. The Chair is free to consult with the Evaluator and the City Attorney on procedural matters. The Chair may also discuss procedural matters *ex parte* with the Respondent.

- c. The Chair shall be the sole contact with the public. The Evaluator shall refer all media inquiries to the Chair.

J. COMMISSION - FINDINGS

1. If the Commission concludes that further investigation is necessary, it shall direct the Evaluator or attorney member of the Commission if appropriate, to conduct further investigation and to report back to the Commission.
2. Upon conclusion of the final Hearing, the Commission shall issue its findings by Resolution.
3. If the Commission determines that there is sufficient evidence to establish that no violation has occurred, the Commission shall publicly announce this fact.
4. If the Commission determines that that there is insufficient evidence to establish that a violation has occurred the Commission shall publicly announce this fact.
5. A determination that a violation has occurred shall be based on a preponderance of the evidence from the entire record of the proceedings.
6. Each Commission member who participates in the decision shall certify on the record that he or she personally heard or read the testimony (either in person or by listening to a tape) and reviewed the entire evidence in the record.
7. The Commission may refer the allegations and any information gathered in the investigation to an appropriate law enforcement agency.
8. The Commission shall not impose a penalty if it is presented with clear and convincing evidence that, prior to the alleged violation:
 - a. the Respondent had requested and obtained a written opinion from the City Attorney or the FPPC; and
 - b. the Respondent, in requesting the opinion, disclosed truthfully all the material facts pertinent to the case; and
 - c. the Respondent committed the acts or violations alleged in the complaint in good faith reliance upon the formal, written opinion of the City Attorney or FPPC.
9. The City Clerk shall provide a copy of the Resolution of the Commission's determination to the Respondent and Complainant.

10. The Decision of the Commission shall be the final administrative determination of the City.

K. ADMINISTRATIVE ORDERS AND PENALTIES

1. If the Commission finds a violation, the Commission may:
 - a. find mitigating circumstances and take no further action;
 - b. issue a public statement or reprimand;
 - c. impose a penalty in accordance with Chapter 12.04 of the San Jose Municipal Code.
2. The votes of at least three Commission members who participated in the decision of violation are required to impose orders and penalties for a violation.
3. In determining if penalties should be imposed for violations of Title 12 of the Municipal Code and the amount of any such penalties, the Commission shall consider all the relevant circumstances surrounding the case including:
 - a. the severity of the violation;
 - b. the presence or absence of any intention to conceal, deceive, or mislead;
 - c. whether the violation was deliberate, negligent or inadvertent;
 - d. whether the violation was an isolated incident or pervasive enough to indicate a pattern of disregard for this Chapter;
 - e. whether the Respondent has a prior record of violations of City law relating to campaign finance, lobbying, conflicts of interest, or governmental ethics;
 - f. the degree to which the Respondent cooperated with the investigation;

- g. whether or not corrective actions were taken, if appropriate, in accordance with the provisions of this Chapter.

L. REFERRALS TO OTHER ENFORCEMENT AGENCIES

At any time, the Evaluator or the Commission may refer the matter to another government agency or official if the Commission determines that the agency or official may more appropriately resolve the allegations in the complaint or enforce the applicable provisions of law. A copy of all information gathered by the Commission staff shall be sent to the agency or official together with the referral.

M. JUDICIAL REVIEW

1. The Resolution shall advise the Respondent that he or she can seek judicial review of the Commission decision in accordance with Chapter 1.16 of the San Jose Municipal Code.
2. Upon receipt of any complaint filed which challenges any decision of the Commission, the City Attorney will decide whether or not that Office has a conflict of interest, which precludes the City Attorney from representing the Commission in the action.
3. If the City Attorney determines that conflict exists, the City Attorney shall retain conflicts counsel to defend the lawsuit.

N. COLLECTION OF FINES

1. Fines imposed by the Commission must be paid within 100 days of the date of the Resolution. A cashiers check for the specified amount shall be remitted to the City Clerk.
2. If the civil penalties are not paid within the time specified, the Clerk should refer the debt to the Director of Finance for submission to the City's collection agency.

O. ROLE OF THE CITY ATTORNEY

1. The City Attorney may provide legal advice to the Commission related to non-complaint matters or general interpretations of the San Jose Municipal Code or relevant state or federal law, but shall not participate in investigations or reviews of complaints. (SJMC § 12.04.080).
2. The Chair or the Evaluator may consult with the City Attorney at any time with regard to procedure or an interpretation of the Code, in general, and not as it applies to facts that are the subject of a pending complaint.

ADOPTED this 1st day of March, 2005, by the following vote:

AYES: CAMPOS, CHAVEZ, CHIRCO, CORTESE, LeZOTTE,
PYLE, REED, WILLIAMS, YEAGER; GONZALES

NOES: NONE

ABSENT: NONE

DISQUALIFIED: NONE

VACANT: DISTRICT 7

RON GONZALES
Mayor

ATTEST:

LEE PRICE, CMC
City Clerk